HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, May 04, 2015
84th Legislature, Number 62
The House convenes at noon
Part Two

Thirty bills are on the daily calendar for second-reading consideration today. The bills analyzed or digested in Part Two of today's *Daily Floor Report* are listed on the following page.

Alma Allen
Chairman
84(R) - 62

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Monday, May 04, 2015

84th Legislature, Number 62

Part 2

SUBJECT: Establishing the Competency-Based Education Grant Program

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 7 ayes — Zerwas, Clardy, Crownover, Martinez, Morrison, Raney, C. Turner

0 nays

2 absent — Howard, Alonzo

WITNESSES: For — Ray Martinez, Independent Colleges and Universities of Texas; Veronica Stidvent, Western Governors University Texas; Jennifer Grube; (*Registered, but did not testify*: Nelson Salinas, Texas Association of Business; Lizbeth Hernandez, TPA; Casey Smith, United Ways of Texas)

Against — None

On — Rex Peebles and Ken Martin, Texas Higher Education Coordinating Board

DIGEST: CSHB 3027 would establish the Texas Competency-Based Education Grant Program to award state financial aid grants to enable eligible students to enroll in competency-based baccalaureate degree programs at eligible institutions. Under this program, students could receive grants to reimburse costs such as tuition and fees at public and private institutions, junior colleges offering baccalaureate degrees, and certain online college degree programs for academic credit based on attainment of competencies.

To be initially eligible to receive a competency-based education (CBE) grant, students would have to meet certain criteria. For example, students would need to meet financial need requirements set by the Texas Higher Education Coordinating Board. Grants could be provided to resident baccalaureate students who were not receiving other forms of state financial aid, such as TEXAS Grants.

Students could remain eligible for grants in subsequent semesters or terms as long as they fulfilled certain performance measures and other eligibility requirements. Those who lost eligibility one semester or term could regain eligibility later under certain circumstances. The coordinating board would have to adopt rules allowing students whose completion rates fell below academic progress requirements in the event of hardship or for other good cause shown to receive a grant if they otherwise were eligible for one. The coordinating board also could increase or decrease grant awards in proportion to the number of credit hours or competency units students took above or below the required number to maintain eligibility.

The bill would limit terms of eligibility for CBE grants to two or four years, depending on the number of credits or competency units students had accrued when they received their first grant. Students who graduated no longer would be eligible for CBE grants, regardless of time spent on their degrees. The bill also would prohibit institutions from rejecting students based on their eligibility for or receipt of a CBE grant.

The maximum annual amount of money awarded for a CBE grant would be 75 percent of the average state appropriation for a full-time undergraduate student in the preceding biennium. Allocations for CBE grants could be issued in the first academic year that the grant program received a state funding appropriation but no earlier than the 2016-17 academic year.

The Texas Higher Education Coordinating Board would adopt rules to administer the provisions of the bill as soon as practicable after the effective date.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 3027 would help Texas students pursue an effective alternative to baccalaureate degrees. Rather than basing course completion on “seat time,” where students complete courses only once the full term has ended, competency-based education (CBE) allows students to advance in their coursework based on their demonstrated mastery of the subject. This model can help students acquire their degrees more quickly.

CBE has been shown to work especially well for returning students. The model also serves other nontraditional students, such as parents or those working part-time, by allowing flexibility in earning credits. The CBE Grant Program would provide needed assistance to these students who might not qualify for state financial aid programs that typically require students to be enrolled a certain number of hours. The bill would ensure that students did not "double-dip" by awarding grants only to those who did not receive other forms of state aid.

CSHB 3027 would help address the state's urgent need for more college-educated workers by offering another option for obtaining a degree. CBE encourages more timely and, therefore, less costly degree attainment. The time limits on program eligibility would ensure that students moved through their programs quickly to avoid excess tuition costs.

Competency-based programs in Texas have seen positive outcomes, and more schools have shown an interest in developing or expanding these offerings. While there are concerns about conflicting funding models and other issues related to implementation of the program, CSHB 3027 would support a promising practice that is worth the state's investment. Although the funding needed for the CBE Grant Program appears in Article 11 of the House's proposed budget, there may be opportunities to assure funding for the program as the budget process continues.

OPPONENTS SAY:

CSHB 3027 would provide for a model that offers some benefits but also potential drawbacks, such as issues with credit transfer. Schools receiving transfer students from competency-based programs could have trouble reconciling their own academic standards with a demonstrated-knowledge standard. This could result in lost credits and increased time-to-degree outcomes for these students. Additionally, students could take longer to demonstrate competency in a subject, potentially increasing their tuition costs.

Developing a state funding mechanism for the competency-based programs also could present a challenge. CSHB 3027 could encourage the creation of more of these programs at state institutions, which currently are funded through mechanisms such as semester credit hours that

probably would not be compatible with the competency-based model.

OTHER OPPONENTS SAY:

Because funding for the CBE Grant Program is not assured in the current budget, CSHB 3027 could affect state funds for other state financial aid programs, such as TEXAS Grants and the Texas Tuition Equalization Grant.

NOTES:

The Legislative Budget Board estimates CSHB 3027 would have a negative net fiscal impact of about $12 million to general revenue through fiscal 2016-17. The bill would take effect in the second year of the biennium, and the impact in fiscal 2018-19 would be an estimated $30 million in general revenue.

SUBJECT: Management and oversight of state contracts

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 9 ayes — Cook, Giddings, Craddick, Farrar, Geren, Harless, Huberty, Kuempel, Sylvester Turner

0 nays

3 absent — Farney, Oliveira, Smithee

WITNESSES: For — (*Registered, but did not testify*: Michael Chatron, AGC Texas Building Branch; Jon Fisher, Associated Builders and Contractors of Texas; Jim Sewell, Gallagher Construction Services; Tom "Smitty" Smith, Public Citizen, Inc.; Michelle Romero, Texas Medical Association; David Lancaster, Texas Society of Architects)

Against — None

On — (*Registered, but did not testify*: Robert Wood, Comptroller of Public Accounts; Ron Pigott, Health and Human Services Commission)

BACKGROUND: Government Code, sec. 2262.101 establishes a Contract Advisory Team to review and make recommendations involving contracts valued at $10 million or more. The team is overseen by the comptroller and includes members from the Health and Human Services Commission, the comptroller's office, the Department of Information Resources, the Texas Facilities Commission, the governor's office, and a state agency with fewer than 100 employees.

Government Code, sec. 2157.068 defines a "commodity item" as commercial software, hardware, or technology services other than telecommunication services that are generally available to businesses or the public and for which a reasonable demand exists in two or more state agencies. With certain exceptions, state agencies are required to purchase IT commodity items through the cooperative contracts program at the Department of Information Resources. Under the program, DIR

establishes "master contracts" awarded through an open and competitive procurement process. Agencies may negotiate further discounts directly with a program vendor or purchase directly from vendors. Agencies are not required to report procurements made through the program to DIR.

The Texas Multiple Award Schedule (TxMAS) contracts developed by the comptroller adapt existing competitively awarded government contracts to the procurement needs of the state.

DIGEST:

CSHB 3241 would add new requirements for state agency contracting and purchasing. The bill would:

- require agency officers or governing boards to approve contracts valued at more than $1 million;
- require public disclosure of no-bid contracts;
- require agencies to post contracting information on their websites;
- prohibit conflicts of interest between agency officers and employees and vendors;
- require a two-year "cooling off" period for employees switching jobs between agencies and vendors; and
- require the state auditor to focus on Health and Human Services contracts exceeding $100 million.

Contracting requirements and oversight. Agencies could enter into contracts for purchase of goods or services valued at more than $1 million only if approved by the agency's governing body and signed by the presiding officer or executive director. For agencies not governed by a multi-member governing body, the agency head would approve and sign a contract. The signature requirement would not apply to certain highway construction or maintenance contracts awarded by the Texas Department of Transportation (TxDOT).

For contracts valued at more than $5 million, the agency contract management office or procurement director would be required to verify in writing that the solicitation and purchasing methods and contractor selection process complied with state law and agency policy. The management office or procurement director also would have to submit to

the governing official or body information on any potential issues that could arise in the contracting process.

Purchasing programs. The bill would add new requirements for contracts for goods and services awarded under the comptroller's multiple award contract schedule (TxMAS) and contracts for information technology commodities awarded under the Department of Information Resources (DIR) cooperative contracts program. Agencies could use the two programs to directly award a contract for purchases valued at $50,000 or less. Agencies would be required to get three bids for purchases valued at more than $50,000 up to $150,000 and six bids for purchases valued at more than $150,000 up to $1 million.

Agencies could not purchase under either TxMAS or the cooperative contracts program if the value of the goods, services, or commodity item exceeded $1 million.

The bill would require state agencies to consult with DIR before developing and initiating a statement of work for a contract valued at more than $50,000. Money could not be paid to a vendor unless DIR first signed the statement of work. Agencies would be required to post each statement of work on their websites.

Contract Advisory Team. The bill would authorize the Contract Advisory Team to review agency notifications of a change order, amendment, renewal, or other proposed action that could change the value of a contract by more than 20 percent. If the team was not satisfied with an agency's justification for the contract change, it would be required to notify the comptroller, who would in turn notify the agency governing board or governing officer, the Legislative Budget Board (LBB), and each member of the Legislature.

The team would be expanded with one member each from TxDOT, the Texas Education Agency, and the Texas Commission on Environmental Quality. The team would submit a quarterly report to the LBB on the number of solicitation documents and contracts it reviewed and whether and why agencies might have accepted or rejected the team's recommendations.

HHSC contracts. The bill would direct the state auditor to consider the performance on HHSC contracts that exceeded $100 million in annual value, including a contract between HHSC and a managed care organization. Such an audit could be limited in scope to target an area of the contract determined to pose the highest financial risk to the state and would determine whether the entity contracting with HHSC had spent state money in accordance with the contract purposes. The state auditor would be allowed to contract with a private auditor.

Risk analysis. Each state agency would be required to develop and comply with a risk analysis procedure. The procedure would have to assess the risk of fraud, abuse, or waste for different types of contracts and identify contracts that would require enhanced monitoring. Agencies would have to publish a contract management handbook.

Vendor performance reviews. The bill would require state agencies to review vendor performance after completion or termination of a contract. Results of the review would be reported to the comptroller. Open enrollment contracts at HHSC would be exempted from the reporting requirement.

The comptroller would be required to establish a system for tracking vendor performance, including the agency performance review. Vendors would be allowed to protest an unfavorable performance review. A state agency could use the tracking system, which would be accessible to the public on the comptroller's website, to determine whether to award a contract to a vendor.

Reporting and posting requirements. Contracts valued at more than $1 million would be subjected to reporting requirements that provided information on compliance with financial provisions and delivery schedules, corrective actions plans, or liquidated damages assessed or collected.

Agencies would be required to post on their websites information about contracts including:

- each executed contract, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding until the contract expired or was completed;
- the statutory or other authority under which a contract that was not competitively bid was entered into without compliance with competitive bidding procedures; and
- the request for proposals related to a competitively bid contract until the contract expired or was completed.

The bill would require agencies to adopt rules establishing a procedure to identify contracts that required enhanced monitoring and to submit that information to the agency's governing body or officer.

Agencies would be required to retain records of contracts, including all contract solicitation documents related to an executed contract, for four years.

Conflicts of interest. The bill would require a two-year waiting period before a former state officer or employee who participated in a procurement or contract negotiation could work for that vendor. Violation of this provision would be a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000). The bill also would prohibit a state agency from hiring or entering into a contract for professional services or consulting with an individual who was a former employee of a private vendor if the agency work related to the individual's former duties for the vendor within two years of the individual's last date of employment with the private vendor.

State employees or officials involved in procurement or contract management would be required to disclose to their agency any potential conflict of interest specified by state law or agency policy with respect to any private vendor contract or bid.

An agency could not enter into a contract if there was a financial interest with a private vendor by:

- a member of the agency's governing body;

- the governing officials, executive director, general counsel, chief procurement officer, or procurement director of the agency; or
- a family member related within the second degree by affinity or consanguinity to any of the above employees or officials.

A financial interest would exist if the employee or official owned or controlled, directly or indirectly, an ownership interest of a least 1 percent, including the right to share in profits, proceeds, or capital gains; or could reasonably foresee that a contract with a vendor could result in a financial benefit.

The comptroller would be required to include ethics training for state agency personnel. The training would include selection of an appropriate procurement method by project type and training by the Department of Information Resources on technology purchasing.

Higher education contracts. The bill would include new purchasing requirements for institutions of higher education. A college or university would not be allowed to enter into a contract valued at more than $1 million or to amend or renew a contract that increased the original value to more than $1 million without approval from the institution's board of regents. The board would have to approve any amendment, extension, or renewal that exceeded 25 percent of the original contract value.

An institution's boards of regents would be required to establish a code of ethics for officers and employees related to contracting, policies for internal investigation of suspected fiscal irregularities, a contract management handbook, and ethics training.

The code of ethics governing an institution of higher education would have to include policies governing:

- general standards of conduct;
- conflicts of interest and conflicts of commitment;
- outside activities by officers and employees;
- the use of institutional resources; and
- prohibitions on an officer or employee acting as an agent for another person in the negotiation of agreements related to money,

services, or institutional property.

Colleges and universities would be required to establish contract review procedures and standards for internal audits related to risk management of contracting. The state auditor would be required to determine whether an institution had adopted the required rules and policies and would report noncompliance to the Legislature and comptroller. Institutions that failed to comply with a remediation plan would have their purchasing authority suspended.

Purchasing study. The comptroller, in cooperation with the governor's budget and policy staff, would be required to conduct a study examining the feasibility and practicality of consolidating state purchasing functions into fewer state agencies or one state agency. The study would examine cost savings that could be achieved through abolishing state agency purchasing offices and consolidating or reducing the number of vendors authorized to contract with the state to allow the state to better leverage its purchasing power.

The study would be due by December 31, 2016, to the governor, lieutenant governor, and Legislature and be posted on the comptroller's website. It would include:

- a detailed projection of savings or costs in consolidating purchasing;
- a report on the process for implementing the consolidation;
- a list of state agencies with purchasing responsibilities; and
- the cost of the purchasing responsibilities.

The bill's provisions for ethics, reporting, and approval requirements would apply to TxDOT and to an institution of higher education acquiring goods and services under specified Education Code provisions.

The bill would take effect September 1, 2015, and would apply only to contracts entered into on or after that date.

SUPPORTERS SAY:

CSHB 3241 would address recent reports of problems in certain state government contracting processes by providing increased management,

oversight, and reporting of contracts.

Over the past few decades, state government has shifted from directly delivering services to contracting for the delivery of many of those services. This shift has resulted in an increasing percentage of the state's budget being spent through contracts, including some contracts involving millions of dollars.

Contracting requirements. The bill would increase agency oversight by requiring the agency head to sign off on contracts exceeding $1 million. The agency governing officer or board also would receive regular progress reports. Some state agencies are large, and this required oversight by agency leaders could help avoid contracting malfeasance. Additionally, the state auditor would be required to consider auditing any HHSC contract exceeding $100 million.

Vendor performance reviews. The bill would establish a publicly available system to track vendor performance, including an evaluation by the comptroller's office. Agencies could use the tracking system to determine whether to award a contract to a vendor. The system would provide a process for vendors who received an unfavorable review to protest.

Reporting and performance requirements. State agencies would be required to post on their websites each contract the agency entered into, including no-bid contracts and the authority under which a contract was not competitively bid. Agencies also would have to retain records related to any solicitations and contracts for at least four years after the contract expired.

Conflicts of interest. The bill contains strong conflict-of-interest provisions, including disclosure requirements. An agency could not enter into a contract with a private vendor in which any of the agency's leadership or their families had a financial interest.

The bill would end the "revolving door" that sometimes occurs between agency employees and vendor employees. A former employee of a state agency who participated in a procurement or contract negotiation with a

certain entity could not then accept employment from that entity until two years after leaving the state agency. A state agency could not hire an individual who was a former employee of a private vendor and performed duties involving a previous contract between that vendor and the state until two years after leaving that vendor.

OPPONENTS SAY:

CSHB 3241 could curtail the ability of state agencies to choose contracting vehicles that best met their needs for specific goods and services. When agencies have greater latitude to choose contractors, they have more choices, which leads to increased competition.

Contracting requirements. The $1 million limit on commodity purchases substantially could increase the number of solicitations required by state agencies. This increase could put a strain on agency contracting and information technology staff. The requirement that DIR sign off on agency contracts involving statements of work would be impractical and cumbersome and could lead to delays in approving and administering contracts.

Conflicts of interest. The bill contains an overly broad "revolving door" prohibition that could prevent a person who merely worked for a division or agency from being barred from future employment with a vendor when that employee had no role in deciding whether a contract was awarded to the vendor.

Vendor performance reviews. Instead of creating a new vendor performance tracking system, state agencies need to use the existing system.

The state's interactions with vendors should be defined by an open exchange of information and transparency. The state performance reviews required in the bill should include feedback from all individuals involved in the administration and supervision of a contracted project. This could open a dialogue about the next steps for continuous improvement.

Purchasing study. The bill should require as part of its centralized purchasing study the identification of best practices in purchasing and contract management, as well as ways the state could encourage greater

competition.

NOTES: The Legislative Budget Board's fiscal note estimates that CSHB 3241 would have a negative impact of about $5 million for fiscal 2016-17.

SUBJECT: Changing the powers and the board of the Gulf Coast Water Authority

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 11 ayes — Keffer, Ashby, D. Bonnen, Burns, Frank, Kacal, T. King, Larson, Lucio, Nevárez, Workman

0 nays

WITNESSES: For — (*Registered, but did not testify*: Rick Ramirez, City of Sugarland; Christina Wisdom, Shintech, Inc.; Daniel Womack, the Dow Chemical Company)

Against — (*Registered, but did not testify*: Kenneth Clark, Galveston County)

On — (*Registered, but did not testify*: Ben Sebree, Marathon Petroleum Corporation)

DIGEST: CSHB 4168 would change the composition of the Gulf Coast Water Authority's board of directors, which currently is composed of seven members representing Galveston County, one member representing Fort Bend County, and one member representing Brazoria County, to the following composition:

- four directors appointed by the Galveston County Commissioners Court, with one representing municipal interests, two representing industrial interests, and one representing the county at large;
- two directors appointed by the Fort Bend County Commissioners Court, with one representing municipal interests and one representing the county at large; and
- three directors appointed by the Brazoria County Commissioners Court, with one each representing agricultural interests, municipal interests, and industrial interests.

The board appointments would have to be made by September 1, 2015. Board members would draw lots to determine which four board members

would serve a one-year term and which five members would serve a two-year term.

The bill also would allow the Gulf Coast Water Authority to enter into retail service agreements to purchase and sell electricity for their own use in connection with the acquisition of water.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 4168 would allow the Gulf Coast Water Authority (GCWA) to better serve its growing customer base by changing the board composition and by allowing the authority to purchase and sell electricity in connection with the acquisition of water.

CSHB 4168 would change the composition of the existing board by increasing representation from Brazoria and Fort Bend counties to better reflect the authority's growing customer base. The GCWA supplies raw surface water to many major industrial, municipal, and agricultural interests in Galveston, Fort Bend, and Brazoria counties, one of the fastest-growing areas in the state. While the authority originally was created to serve industrial users in Galveston County, more than 40 percent of the authority's total contracted water volume is currently from Brazoria and Fort Bend counties. As population increases in certain areas and water supply demands evolve, GCWA must have a board that would take a more regional approach to addressing water needs. Even with a shift in board composition, industrial users would be well represented.

The bill also would help GCWA pursue alternative water sources to meet increased demands due to industrial expansion and a growing population. With the limited water availability in the Brazos River made worse by prolonged drought conditions, GCWA is looking to marine seawater as a potential source of public water supply. However, there are substantial energy costs associated with treating marine seawater to potable standards. With this legislation, GCWA could invest in an integrated marine seawater desalination and power project to enhance development of freshwater for its customers. GCWA also could explore and invest in

hydro power. By purchasing a small amount of hydro power output, GCWA could take advantage of the stored water associated with that power production.

OPPONENTS SAY:

CSHB 4168, by changing the composition of the GCWA board to give more representation to Brazoria and Fort Bend counties, could create a struggle between industrial and municipal interests. GCWA was originally created to serve industrial users in Galveston County who financed much of the authority's infrastructure and who hold the senior water rights. Brazoria and Fort Bend counties are strictly customers and should not have increased representation on the board without a strategic plan for the increased demand that population growth in those counties will have on the water supply.

NOTES:

The author plans to offer an amendment requiring that those appointed to the Gulf Coast Water Authority be customers or a representative of an entity that was a customer of the district.

SUBJECT: Making video of officer interactions for intoxication offenses available

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 9 ayes — Phillips, Nevárez, Burns, Dale, Johnson, Metcalf, Moody, M. White, Wray

0 nays

WITNESSES: For — (*Registered, but did not testify*: Calvin Tillman)

Against — (*Registered, but did not testify*: Frederick Frazier, Dallas Police Association; Ray Hunt, Houston Police Officers' Union)

DIGEST: HB 3791 would amend the Code of Criminal Procedure to entitle an individual who was stopped or arrested on suspicion of particular intoxication offenses to receive a copy of any video made of the stop or arrest from the relevant law enforcement agency.

An individual stopped or arrested on suspicion of driving while intoxicated, driving while intoxicated with a child passenger, intoxication assault, or intoxication manslaughter would be entitled to receive any video containing footage of:

- the stop;
- the arrest;
- the conduct of the person stopped during any interaction with the officer, including administration of a field sobriety test; or
- a procedure in which a specimen of the person's breath or blood was taken.

The bill would take effect September 1, 2015, and would apply only to a recording of conduct that occurred after that date.

SUPPORTERS SAY: HB 3791 would allow a person stopped or arrested for certain intoxication offenses to obtain a video of the arrest, which could help ensure that the events recorded in the video were known to all parties. Many stops and

arrests for intoxication offenses are made on a judgment call. While one officer may believe someone is intoxicated, another may not. Sometimes these videos show conduct claimed by a police officer that an arrestee disputes. Allowing a person who was stopped or arrested to access the video would help establish the truth.

The bill could save defense attorneys and defendants time in reviewing evidence. Currently, defendants who wish to watch police videos must do so at their attorneys' offices, and the videos cannot be released to them. Many times a defendant is the best person to interpret what is being said or done in the video, and the defendant might be able to gather more information from watching the video in a setting other than the attorney's office, where the defendant might not have enough time to thoroughly view and interpret it.

OPPONENTS SAY:

HB 3791 could create confusion about what is required of law enforcement. The bill would not specify a time frame by which the law enforcement agency would be required to provide a copy of the video. Sometimes these videos are not ready for at least 30 minutes after an officer returns to a police station, and it is not clear whether law enforcement agencies would be in violation of the law if a video was requested by an individual immediately after an arrest.

The bill would require that a law enforcement agency make a copy of the video available when the agency did not physically have the video available to provide. All agencies provide video evidence to the district attorney's office soon after the video is recorded, but police agencies may not keep copies, and it would drain valuable police resources to require a person on staff to make and provide video copies on request. The district attorney's office already provides the video to the defense attorneys.

SUBJECT: Refunding hotel occupancy tax revenue for certain hotel projects

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 9 ayes — D. Bonnen, Y. Davis, Bohac, Button, Darby, Martinez Fischer, Murphy, C. Turner, Wray

1 nay — Springer

1 absent — Parker

WITNESSES: For — Larry Long, City of Odessa; Justin Bragiel, Texas Hotel and Lodging Association

Against — None

On — (*Registered, but did not testify*: Donald Dillard, Comptroller of Public Accounts)

DIGEST: CSHB 3692 would include within the definition of a "qualified hotel project" a hotel that was constructed within 1,000 feet of a municipally owned convention center and was located in a municipality that meets the description in the bill (Midland and Odessa).

For any hotel projects that fell within this new provision, the municipality could agree to refund all or part of the revenue from the hotel occupancy tax generated by the hotel for 20 years. If the municipality chose to provide a refund, it could not, after the hotel first opened, reduce below a certain level the percentage of hotel occupancy tax revenue allocated for advertising designed to attract tourists and convention delegates to the area.

A municipality that received revenue under these new provisions would be entitled to receive hotel occupancy tax revenue from the qualified hotel project during the first 20 years of the hotel's operation.

This bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 3692 would be a vital incentive for economic development in the cities of Midland and Odessa. By refunding the state hotel occupancy tax, hotel rooms would become less expensive and more competitive with hotels from other regions. This legislation would benefit large hotel projects associated with convention centers that currently are being planned, which could help drive tourism and economic growth in the region.

The state should continue to assess these exceptions on a case-by-case basis. The Legislature is best equipped to impartially analyze and oversee that the hotel occupancy tax revenue is used to its greatest effect.

OPPONENTS SAY:

CSHB 3692 would create yet another exception to the collection of state hotel occupancy taxes. While the state has an interest in promoting economic development, every municipality could make some argument for the return of hotel occupancy taxes. That does not mean the state should grant every request, however. The Legislature has created so many individual exceptions to return percentages of the hotel occupancy tax that instead of creating another exception, it should consider allowing all municipalities to collect the revenue instead.

NOTES:

The Legislative Budget Board’s fiscal note indicates that the bill would have an estimated negative impact to general revenue related funds of $170,000 in fiscal 2016-17.

SUBJECT: Changing requirements for certain barber, private beauty culture schools

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 8 ayes — Smith, Gutierrez, Geren, Goldman, Guillen, Miles, D. Miller, S. Thompson

0 nays

1 absent — Kuempel

WITNESSES: For — (*Registered, but did not testify*: William Andrew Brummett, Institute for Justice; Linda Connor)

Against — Linda Colwell; Paul Griffith

On — Brandon Martin, Career Colleges and Schools of Texas; Holly Zapata, Career Colleges and Schools of Texas, Professional Beauty Association; William Kuntz, Texas Department of Licensing and Regulation

BACKGROUND: Occupations Code, sec. 1601.353 sets certain minimum square-footage and equipment requirements for barber schools. Sec. 1602.303 sets certain minimum square-footage and equipment requirements for private beauty culture schools, including a requirement to maintain separate areas for clinic work and instruction in theory.

In January 2015, a U.S. District Court judge held in *Brantley v. Kuntz* that a minimum square-footage and equipment requirement for hair-braiding schools in Texas violated the U.S. Constitution and did not advance any legitimate government interest.

DIGEST: CSHB 3325 would amend the requirements for barber and private beauty culture schools offering certain licenses and certifications.

The bill would specify that the current requirements for barber schools

would apply only to those schools that offered instruction to persons seeking a Class A barber certificate. Barber schools meeting the current requirements could offer instruction in barbering to persons seeking any barber certificate, license, or permit offered under Occupations Code, ch. 1601.

The Texas Department of Licensing and Regulation could approve an application for a permit for a barber school that offered instruction to people seeking a certificate, license, or permit other than a class A barber certificate if the school:

- had adequate space, equipment, and instructional material to provide quality training, as determined by the Texas Commission of Licensing and Regulation; and
- met any other requirements set by the commission.

CSHB 3325 would specify that the current requirements for private beauty culture schools applied only to those schools that offered instruction to persons seeking an operator license. Private beauty culture schools meeting the current requirements could offer instruction in cosmetology to persons seeking any cosmetology certificate or license offered under Occupations Code, ch. 1602.

The bill would specify requirements for a private beauty culture school license for instructing persons seeking a cosmetology license or certificate, other than an operator license. The application for such a license would have to:

- be accompanied by the required license and inspection fees;
- be on a form prescribed by the department;
- be verified by the applicant;
- contain a statement that the building was of permanent construction and was divided into at least two separate areas for instruction of theory and clinic work;
- contain a statement that the building had adequate space, equipment, and instructional material, as determined by the commission, to provide quality classroom training;

- contain a statement that the building had access to permanent restrooms and adequate drinking fountain facilities; and
- meet any other requirement set by the commission.

CSHB 3325 would allow the commission to set additional requirements for private beauty culture school license applicants. The bill would require the commission to adopt rules as soon as practicable to implement the changes made by this bill.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 3325 would lower barriers for certain barber and beauty schools to enter the market and create affordable education opportunities. The bill would allow barber and private beauty culture schools that chose to teach specialized curriculum to open without incurring unnecessary expenses, as long as they did not offer instruction for a class A barber license or a cosmetology operator license. The bill would make exceptions to the expensive and demanding requirements otherwise placed on barber and private beauty culture schools, such as maintaining a building with minimum square-footage, certain equipment, and classroom space.

Brantley v. Kuntz specifically dealt with hair-braiding and the fact that the requirements for a barber school were unconstitutional for that practice, but its reasoning applies to other areas as well. Besides hair-braiding, there are many specialized practices of barbering and cosmetology, such as esthetics, manicuring, and eyelash extension. The bill would lower barriers to opening for schools wishing to offer such instruction. As a result, more people could afford education in these areas because the tuition would not be as expensive as for traditional barber or private beauty culture schools.

CSHB 3325 would allow Texas Commission of Licensing and Regulation to set standards for these specialized barber or private beauty culture schools. The requirements laid out in the bill for these schools would be similar to those required for certain driver education schools. The commission has the authority to make adequacy determinations in many

different areas and would be well suited to make those decisions in the barber and cosmetology fields.

OPPONENTS SAY:

CSHB 3325 would not provide enough defined requirements for schools offering barber and cosmetology licenses to ensure that graduates were prepared and qualified for jobs in those fields. While the requirements for schools offering class A barber certificates and cosmetology operator licenses would be defined sufficiently, the requirements for schools offering other certificates or licenses would not.

The goal of any barber or private beauty culture school should be to educate and train students so that they are ready for a job in their chosen areas. The bill would not be specific enough to ensure that the schools offering licenses or certificates other than class A barber certificates and cosmetology operator licenses were equipped with sufficient space, equipment, or materials needed to offer that level of training and education.

SUBJECT: Creating a consumer-directed health plan option for state employees

COMMITTEE: Pensions — favorable, without amendment

VOTE: 6 ayes — Flynn, Hernandez, Klick, Paul, J. Rodriguez, Stephenson

1 nay — Alonzo

WITNESSES: For — Jessica Watts, Texas Association of Health Underwriters; John Davidson, Texas Public Policy Foundation; Becky Parker; (*Registered, but did not testify*: Teresa Devine, Blue Cross and Blue Shield of Texas; Christy Willhite, Capital Metropolitan Transportation Authority; Marc Alcedo, Cigna Healthcare; Lee Loftis, Independent Insurance Agents of Texas; Annie Spilman, National Federation of Independent Business-Texas; Amanda Martin, Texas Association of Business; Jamie Dudensing, Texas Association of Health Plans; Darren Whitehurst, Texas Medical Association)

Against — Donald Zavodny, AFSCME Texas Corrections; Ted Melina Raab, Texas American Federation of Teachers; Ray Hymel, Texas Public Employees Association; Joanne Day and Leroy Haverlah, Texas State Employees Union; (*Registered, but did not testify*: Mark Cebulski, and Maura Powers, AFSCME Texas Retirees; Currie Hallford, CWA Texas Legislative and Political Committee; Bill Hamilton, Retired State Employees Association of Texas; Rene Lara, Texas AFL-CIO; Glenn Scott, Texas Alliance for Retired Americans)

On — (*Registered, but did not testify*: Robert Kukla, Employees Retirement System of Texas)

BACKGROUND: Under federal law, an adult not enrolled in Medicare covered under a high-deductible health plan can make annual tax-exempt contributions to a health savings account. Contributions made by an employer to an employee's account may be excluded from the employee's gross income. The contributions can be carried forward from year to year. Employees can keep their accounts if they changes jobs or leave the workforce. Insurance Code, ch. 1551 establishes the Texas Employees Group

Benefits Act, which provides insurance coverage including health benefits for state employees and their dependents.

DIGEST:

HB 966 would establish a state consumer-directed health plan option for state employees and their eligible dependents. The board of trustees of the Employees Retirement System of Texas (ERS) would be directed to establish health savings accounts and finance a self-funded high deductible health plan.

Definitions. The bill would use the federal definition of "high deductible health plan" as a plan which meets certain cost requirements for annual deductibles and out-of-pocket expenses. A "plan enrollee" would mean an employee or annuitant who is enrolled in the state consumer-directed health plan. The bill would define "qualified medical expense" as an expense paid by a plan enrollee for medical care, as defined by the Internal Revenue Code of 1986.

State and employee contributions. The state would contribute to a high-deductible health plan the amount necessary to pay the cost of coverage, not to exceed the amount the state would annually contribute for a full-time or part-time employee for basic coverage under the existing Group Benefits Program.

For dependents, the state would contribute to a high-deductible health plan the same percentage of the costs of coverage it would annually contribute for basic coverage for the dependent. Any remaining required contributions for dependent coverage would be paid by the employee. Amounts contributed by a plan enrollee for dependent coverage could be used to pay the cost of coverage not paid by the state or allocated by the ERS board to an enrollee's health savings account.

Before each plan year, the ERS board would be authorized to determine the amount of allocation of the state's contribution, if any, to an enrollee's health savings account that remained after payment for coverage. A plan enrollee could contribute any amount allowed under federal law to the enrollee's health savings account.

ERS requirements. The ERS board would have to ensure that the plan

included preventive health care and would have to provide information about the plan to eligible employees.

The board would have exclusive authority to determine whether a plan enrollee would be eligible to participate in a flexible spending account program. A plan enrollee could not participate in any flexible spending account that would disqualify the enrollee's health savings account from favorable tax treatment under federal law.

The account administrator selected to administer a health savings account would have to be qualified to serve as trustee under the Internal Revenue Code of 1986 and be experienced in administering health savings accounts or other similar trust accounts.

ERS would be directed to develop the state consumer-directed health plan so that coverage began on September 1, 2016. ERS would be required to develop and implement the health savings account program in a manner that was as revenue-neutral as possible.

The bill would state that it was the intent of the Legislature that ERS could not divide the self-funded risk pool of the existing Group Benefits Program.

This bill would take effect September 1, 2015.

SUPPORTERS SAY:

HB 966 would give state employees the option of controlling their health care expenses through participation in a high-deductible health plan with a health savings account. Health savings accounts are tax-protected accounts that can be spent only on health care expenses. In order to qualify for a health savings account, an individual would have to enroll in a high-deductible health care plan.

This bill would give employees the freedom to choose a plan that best fit their needs. Employees would be able to build up their health savings account year to year through their own contributions, along with any state contributions, and could take their account with them if they changed jobs. No employee would be required to participate in the consumer-directed health plan.

Adding this option would not weaken the existing employee health plan through "adverse selection" as some have claimed because the bill clearly states the Legislature's intent that the two plans not be divided into separate risk pools. The overall cost of state employee health coverage would be shared by all participants, no matter which health plan they chose.

This type of plan could encourage participants to actively participate in their health care as consumers, not just as patients. Employees who chose a high-deductible health plan with a health savings account could become more involved in the health care process and more conscious of health care costs. This would encourage participants to take personal responsibility for their heath, which could lead to lower health costs overall for the state.

A 2006 study prepared for ERS concluded that a consumer-directed health plan option could be an attractive choice for a subset of employees without causing a substantial negative impact to the current plan and enrollees.

Texas would join a number of other states and many private companies that offer their employees a consumer-driven health plan. An industry group has estimated that enrollment in health savings account plans had grown on average 15 percent annually since 2011. Indiana was one of the first states to adopt consumer-driven health plans in 2006. A 2010 study of Indiana's experience found lower average costs for employees covered by consumer-driven health plans compared to those covered by traditional plans. The study found factors that lead to reduced costs include substituting generics for brand drugs, avoiding unnecessary visits to the emergency room, and going to a primary care physician instead of a specialist when possible. The study found no evidence that participants in the plans delayed care due to cost concerns.

OPPONENTS SAY:

HB 966 could pose unnecessary risks to the health of state employees and the long-term stability of the state's group insurance program.

With deductibles of at least $1,300 for individuals and $2,600 for families,

high-deductible plans are most likely to be chosen by younger, higher-paid employees. This could leave older and perhaps less healthy workers in the traditional plan and cause premium costs to increase. This type of "adverse selection" could undermine the concept of insurance as spreading risk over the broadest possible pool to keep costs under control.

Studies have found that average contributions by employers to employees' health savings accounts did not cover the deductibles in a high-deductible plan. Some lower-wage workers could experience financial hardships covering the gap between their health savings and the cost of care. Others could avoid or delay care because of costs. Health savings accounts could be particularly burdensome on women, who routinely need more medical care than men.

Health savings accounts would not slow the overall growth of health care costs. Once an individual met the plan's out-of-pocket maximum, the plan would cover expenses in full, similar to a traditional plan. Individuals with chronic disease and high claims still would drive the bulk of health benefit costs, regardless of the type of plan.

Participants in high-deductible health plans with health savings accounts are expected to shop for health insurance plans. Comparing plans can be difficult, as can managing the health savings account. The onus of making prudent health care decisions should not rest solely on state employees.

A 2006 study prepared for ERS said implementing a consumer-directed health plan option could be time-consuming and expensive relative to the potentially low enrollment expected if the plan was optional.

SUBJECT: Expanding penalties that could be used for indigent civil legal services

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Smithee, Farrar, Clardy, Hernandez, Raymond, Sheets, S. Thompson

2 nays — Laubenberg, Schofield

WITNESSES: For — Harriet Miers, Texas Access To Justice Commission; (*Registered, but did not testify*: Guy Herman, Statutory Probate Courts of Texas; Patricia McAllister, Texas Access to Justice Commission; Randall Chapman)

Against — None

On — Jim Davis, Office of the Attorney General; Eva Guzman, Supreme Court of Texas; Betty Balli Torres, Texas Access to Justice Foundation; (*Registered, but did not testify*: Nathan Hecht, Supreme Court of Texas, Texas Judicial Council)

BACKGROUND: Under Government Code, sec. 402.007, penalties recovered by the attorney general under Business and Commerce Code, subch. E, ch. 17, known as the Deceptive Trade Practices-Consumer Protection Act, must be transferred to the judicial fund for programs approved by the Supreme Court that provide basic civil legal services to the indigent, unless another law or judgment required that the penalties be distributed otherwise. Civil restitutions recovered by the attorney general arising from conduct that violates a consumer protection, public health, or general welfare law may be transferred to the judicial fund if certain conditions are met.

DIGEST: CSHB 1079 would require the comptroller to transfer any civil penalties or payments recovered in an action by the attorney general in any matter actionable under the Business and Commerce Code to the judicial fund for programs approved by the Supreme Court that provide basic legal services to the indigent unless another law or judgment required that the funds be distributed otherwise.

The bill also would authorize transfers to the judicial fund of any civil restitution recovered by the attorney general if certain conditions were met, regardless of whether it arose from conduct violating a consumer protection, public health, or general welfare law.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015, and would apply only to a civil penalty, payment, or restitution that received by the attorney general on or after that date.

SUPPORTERS SAY:

CSHB 1079 is necessary to ensure that all Texans receive fair and equitable access to the courts. Civil legal aid programs are essential to ensuring this access. Unfortunately, funding for legal aid has declined sharply in recent years. In the past, the Texas Access to Justice Foundation has been funded by interest from attorneys' trust accounts. However, due to the historically low interest rates in recent years, that funding has not been sufficient to meet the growing need for legal aid.

About 5.6 million Texans qualify for assistance, and current programs are meeting only about 20 percent of the civil legal needs of eligible Texans. Under current law, civil legal aid programs are partially funded from penalties collected under the Deceptive Trade Practices-Consumer Protection Act. However, this has not been sufficient to grant indigent Texans fair access to the courts. This bill would expand the funds that could be eligible to fund civil legal aid and provide more stable funding for these programs.

This bill would not adversely affect the Office of the Attorney General because it would apply only to the net amount recovered after the attorney general's expenses in pursuing the claim are paid.

The bill would not impact other programs that receive funds from payments recovered by the attorney general because any law or judgment requiring that the funds be paid to a different account or named recipient would prevent them from being transferred to the Supreme Court.

OPPONENTS SAY:

CSHB 1079 is unnecessary because the most recent draft of the House's proposed budget would appropriate about $61 million in fiscal 2016-17 to basic civil legal services, up from about $50 million in fiscal 2014-15. There is uncertainty over the amounts that would be recovered from future civil penalties and civil restitutions. The bill would move an indeterminate amount of money from the general revenue to the Supreme Court's judicial fund.

Basic civil legal services are funded through grants to 26 programs throughout the state that provide these services. Information on how those programs spend the grants is difficult to access. If an indeterminate amount of money is going to be granted to these programs, there should be greater transparency and oversight in how they spend their money. Transparency would lead to more effective and efficient provision of legal services.

NOTES:

The Legislative Budget Board's fiscal note states that the implications to the state cannot be determined because amounts recovered from future civil penalties are unknown.

SUBJECT: Payment of the instructional materials allotment to school districts

COMMITTEE: Public Education — committee substitute recommended

VOTE: 9 ayes — Aycock, Allen, Bohac, Deshotel, Galindo, González, Huberty, K. King, VanDeaver

0 nays

2 absent — Dutton, Farney

WITNESSES: For — Susan Lenox, Instructional Material Coordinators' Association of Texas; Bruce Gearing, Texas Association of Community Schools (TACS); (*Registered, but did not testify*: Kevin Brown, Alamo Heights ISD and TASA; David Anderson, Arlington ISD Board of Trustees; Mike King and Gina Mannino, Bridge City ISD; Julea Johnson, Bryan ISD; John Marez, Corpus Christi ISD; Jodi Duron, Elgin ISD; Mary Whiteker, Hudson ISD; Howell Wright, Huntsville ISD; Abel Villareal, Instructional Material Coordinators' Association of Texas; Berhl Robertson, Jr., Lubbock ISD; Jimmy Parker, Lubbock Roosevelt ISD; Keith Bryant, Lubbock-Cooper ISD; Sarah Matz, TechAmerica; Theresa Treviño, Texans Advocating for Meaningful Student Assessment; Barry Haenisch and Casey McCreary, Texas Association of School Administrators; Doug Williams, Texas Association of School Administrators; Jennifer Bergland, Texas Computer Education Association; Mark Terry, Texas Elementary Principals and Supervisors Association; Colby Nichols, Texas Rural Education Association; Ray Freeman, The Equity Center; Grover Campbell, Texas Association of School Boards; Becky St John)

Against — None

On — Shirley Beaulieu and Von Byer, Texas Education Agency; (*Registered, but did not testify*: Lisa Dawn-Fisher and Monica Martinez, Texas Education Agency)

BACKGROUND: SB 6 by Shapiro, enacted by the 82nd Legislature during its first called session, required the State Board of Education to set aside 50 percent of

the annual distribution from the Permanent School Fund to the Available School Fund to fund the instructional materials allotment.

Education Code, sec. 31.0211 establishes a school district's entitlement to an annual allotment from the state instructional materials fund for each student enrolled on a date during the preceding school year.

DIGEST:

CSHB 1474 would entitle school districts to a biennial, instead of an annual, allotment from the state instructional materials fund for each student enrolled in the district on a date during the last year of the preceding biennium. The education commissioner would be required to determine the amount of the allotment per student each biennium on the basis of the amount of money available in the state instructional materials fund.

The bill also would require the commissioner to deposit the allotment amount in districts' accounts in the first year of each biennium. As early as possible each biennium, the commissioner would notify districts and open-enrollment charter schools of the estimated amount of their instructional materials entitlement. Districts and charters could place an order for instructional materials before the beginning of a fiscal biennium and receive materials before payment.

The State Board of Education would be required each biennium to set aside an amount equal to 50 percent of the distribution for that biennium from the Permanent School Fund to the Available School Fund.

The Texas Education Agency would be permitted, to the extent authorized by the General Appropriations Act, to make temporary transfers from the Foundation School Fund for payment of the instructional materials allotment. Temporary transfers could be made earlier than two days before a required installment payment to districts if necessary.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1474 would help districts and charter schools manage their purchases of textbooks and electronic instructional materials by giving them all of their biennial instructional materials allotment at the start of

each biennium. The current system of distributing half of the amount in each year of a biennium can make it difficult for districts to replace large numbers of textbooks at once.

The proposed method of distributing funds could encourage districts to order materials early, allowing teachers to have textbooks ready for the first day of class. Districts, particularly those that are experiencing rapid growth in student enrollment, currently may have to defer purchases or use some of their other funds to purchase instructional materials. A biennial distribution also could give districts more flexibility to manage technology licenses and online subscriptions that come due at different times.

Although the temporary transfer of funds from the Foundation School Fund to the instructional materials allotment in the first year of a biennium could result in lost interest earnings, the benefits of getting money to local districts earlier would be worth the cost. Additionally, the comptroller's office has suggested that the amount of lost interest estimated by the Legislative Budget Board could be cut in half by transferring the instructional materials allotment to districts in March 2016 instead of September 2015.

OPPONENTS SAY:

CSHB 1474's requirement that all instructional materials allotment funding be available in the first year of a biennium would cost an estimated $4.2 million in lost interest earnings, according to the Legislative Budget Board's fiscal note. This is money that could be used to support public schools.

NOTES:

The Legislative Budget Board's fiscal note estimates that CSHB 1474 would cost an estimated $4.2 million to general revenue related funds for fiscal 2016-17.

SUBJECT: Amending certification of school district taxable values to TEA

COMMITTEE: Public Education — committee substitute recommended

VOTE: 9 ayes — Aycock, Allen, Bohac, Deshotel, Galindo, González, Huberty, K. King, VanDeaver

0 nays

2 absent — Dutton, Farney

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Laurie Mann, Texas Comptroller of Public Accounts)

BACKGROUND: The Foundation School Program (FSP), established in Education Code, ch. 42, is the primary means of providing state aid to public schools in Texas. Funding levels for schools from the FSP are based on an entitlement calculated for each school district and charter school through formulas established in the Texas Education Code and the general appropriations act. A portion of districts' FSP entitlement may be covered by local property tax revenue.

Under Government Code, secs. 403.302(j) and (k), for purposes of the FSP, the Comptroller of Public Accounts must certify to the commissioner of education certain taxable values based on the market value of all taxable property for each school district. These include values based on varying homestead exemptions under the Texas Constitution.

According to the comptroller's office and TEA, many values required under current law no longer are used by TEA for the FSP and the comptroller's office certifies many values not required but that TEA uses. These values often are shared with the Legislative Budget Board, as well.

DIGEST:

CSHB 2293 would remove from statute specific taxable values for school districts that the comptroller currently is required to certify to the commissioner of education.

The bill would enable the comptroller, the Texas Education Agency (TEA), and the Legislative Budget Board to enter into an interagency memorandum of understanding under which the comptroller would certify taxable values for each school district to the commissioner of education according to terms decided by the agencies.

The bill would take effect January 1, 2016, and would apply only to certifications made by the comptroller to TEA on or after that date.

SUBJECT: Excepting certain chemical manufacturers from reporting requirements

COMMITTEE: Public Health — committee substitute recommended

VOTE: 11 ayes — Crownover, Naishtat, Blanco, Coleman, Collier, S. Davis, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

WITNESSES: For — Daniel Womack, the Dow Chemical Company; (*Registered, but did not testify*: Julie Moore, Occidental Petroleum)

Against — None

BACKGROUND: Health and Safety Code, sec. 481.080 is part of the Texas Controlled Substances Act. Under this section, an entity that sells, transfers, or otherwise furnishes a chemical laboratory apparatus must make a record of the transaction and must maintain the record for at least two years. In addition, these entities must submit a report of the transaction to the Department of Public Safety (DPS). Entities that receive a chemical laboratory apparatus from a source outside the state or that discover a loss or theft of such an apparatus also must submit a report of the transaction to the director of DPS.

The director of DPS may exempt a chemical laboratory apparatus from record requirements if the director determines that the apparatus does not jeopardize public health and welfare or is not used in the illicit manufacture of a controlled substance or controlled substance analogue.

The Occupational Safety and Health Administration certifies through the Voluntary Protection Program employers that have implemented effective safety and health management systems and have maintained low injury and illness rates for their industry. The Texas Commission on Environmental Quality can provide a Facility Operations Area (FOA) authorization to petroleum refineries and chemical manufacturing plants that must conduct corrective action for releases from solid waste management units and areas of concern related to a hazardous waste

permit or corrective action order. Using an FOA allows all contamination from manufacturing process areas and waste units within those areas to be addressed with a response action.

DIGEST:

HB 2675 would exempt certain chemical manufacturers engaged in research and development from reporting requirements related to transactions of chemical laboratory apparatuses if the manufacturers met certain criteria.

To be exempt, the chemical manufacturer's primary business would have to be the manufacture, use, storage, or transportation of hazardous, combustible, or explosive materials. The chemical manufacturer would have to operate a secure, restricted location that contained a physical plant not open to the public and would have to use security personnel to constantly monitor the entrance into the location. The chemical manufacturer also would be required to hold a Voluntary Protection Program Certification from the Occupational Safety and Health Administration or a Facility Operations Area authorization under the Texas Risk Reduction Program to be exempt from the reporting requirements.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUBJECT: Exempting EMS nonprofits from motor fuel taxes

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 10 ayes — D. Bonnen, Y. Davis, Bohac, Button, Darby, Martinez Fischer, Murphy, Springer, C. Turner, Wray

0 nays

1 absent — Parker

WITNESSES: For — Lucille Maes, Angleton Area Emergency Medical Corps, Inc.; Fred Ortiz, Lake Jackson Emergency Medical Services; (*Registered, but did not testify*: Michael Weaver, Church group; Angela Smith, Fredericksburg Tea Party; Butch Oberhoff, Texas EMS Alliance; Dudley Wait, Texas EMS Alliance; Courtney DeBower, Texas EMS, Trauma and Acute Care Foundation; Matt Long; Sandy Ward)

Against — None

On — (*Registered, but did not testify*: David Reed, Comptroller of Public Accounts)

BACKGROUND: Tax Code, ch. 162 governs motor fuel taxes, including taxes on gasoline, diesel, liquefied petroleum gas, and compressed natural gas. In addition to specifying how these taxes are to be collected, it also provides several exemptions to these taxes, including those for public schools, public transportation agencies, and transportation contractors serving public schools.

DIGEST: HB 2731 would amend the Tax Code to exempt nonprofit entities that exclusively provide emergency medical services (EMS) from fuel taxes on fuel used in the nonprofits' operations.

Gasoline and diesel. The bill would exempt EMS nonprofits from taxes on gasoline and diesel used in emergency operations. It would allow EMS nonprofits to receive refunds for any gasoline or diesel taxes paid.

Liquefied petroleum gas. The bill would exempt EMS nonprofits from taxes on liquefied petroleum gas used in emergency operations. It also would not require vehicles used by EMS nonprofits in their emergency operations to bear either a liquefied gas tax decal or a special-use liquefied gas tax decal.

Compressed natural gas and liquefied natural gas. The bill would exempt EMS nonprofits from taxes on compressed natural gas or liquefied natural gas used in emergency operations. It would allow EMS non-profits to receive refunds for any taxes paid on compressed natural gas or liquefied natural gas.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015, and would not affect tax liability accruing before that date.

SUPPORTERS SAY:

HB 2731 would save non-profit emergency medical services (EMS) companies significant money by exempting them from fuel taxes. Nonprofit ambulance companies typically serve small cities or rural areas where municipal governments cannot afford to operate ambulance services themselves. These nonprofits provide an important public service, often with volunteer labor, and the money saved under the bill would benefit the public served by these companies.

Although government-run ambulance services do not have to pay gasoline and other fuel taxes, nonprofit ambulance services are required to pay them, which is unfair. The costs of the bill would be modest, but an exemption could make a large difference for EMS nonprofits' budgets, which would contain more money to provide emergency services in their communities.

OPPONENTS SAY:

Although EMS nonprofits provide an important service to their communities, HB 2731 would cost the state money at a time when Texas has several priorities that require funding, including transportation and public education. Fuel taxes help fund the State Highway Fund and, to a lesser extent, the Available School Fund. Tax money supporting these

purposes is important and should not be exempted to provide tax breaks for EMS nonprofits.

NOTES:

The Legislative Budget Board estimates HB 2731 would have a cost of $177,000 to general revenue for the biennium ending august 31, 2017 if the bill went into effect September 1, 2015. If the bill went into effect immediately, the cost would be $193,000.

SUBJECT: Expanding services offered by colonia self-help centers

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 6 ayes — Alvarado, Hunter, R. Anderson, Bernal, Elkins, M. White

0 nays

1 absent — Schaefer

WITNESSES: For — James Flores, Webb County Community Action Agency; Bobby Bowling; (*Registered, but did not testify*: Alice Bufkin, Texans Care for Children; Chuck Rice, Texas Land Developers Association; Jennifer Allmon, Texas Catholic Conference of Bishops)

Against — Jeanne Talerico, Texas Association of Local Housing Finance Agencies; Josue Ramirez, Texas Low Income Housing Information Service

On — Oscar Munoz, Texas A&M Colonias Program; (*Registered, but did not testify*: Homero Cabello, Texas Department of Housing and Community Affairs)

BACKGROUND: Government Code, sec. 2306.582 requires the Department of Housing and Community Affairs to establish colonia self-help centers in El Paso County, Hidalgo County, Starr County, Webb County, and Cameron County, the latter also serving Willacy County. The department also may establish more self-help centers if a county is designated under the relevant statute as an economically distressed area. Maverick County and Val Verde County have self-help centers under this provision.

Government Code, sec. 2306.586 describes the purpose of colonia self-help centers as providing assistance for housing-related issues and services that self-help centers, with department approval, determine are necessary to assist colonia residents in improving their physical living conditions, including help in obtaining suitable alternative housing outside of the colonia's area. Specifically, self-help centers must assist low-

income individuals and families to finance, refinance, construct, improve, or maintain a safe, suitable home in the colonias' designated area or another area approved by the department.

Self-help centers must set a goal of improving living conditions for residents in the colonia within a two-year period after a contract is awarded by the department. They are not permitted to provide grant, financing, or loan services in a colonia if water service and suitable wastewater disposal are not available.

Self-help centers receive their funding from the U.S. Department of Housing and Urban Development's Texas Community Development Block Grant program.

DIGEST:

HB 217 would expand the purpose of colonia self-help centers from assisting on matters specifically related to housing for residents to include other services that would improve living conditions for residents.

In addition to assisting colonia residents in obtaining suitable alternative housing outside colonia areas, the bill would permit self-help centers to also provide services to assist residents in securing employment, establishing or expanding small businesses, or managing personal finances.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

HB 217 would allow colonia self-help centers to provide additional services to colonia residents that could improve their lives. Self-help centers currently are authorized to assist only on housing-related issues. While housing is an essential part of a person's quality of life, it is not the only part. Under this bill, self-help centers would help colonia residents become more financially independent and provide them with vital skills, including finding a job, managing personal finances, or building their own businesses. Other organizations that offer these services are not available in every colonia.

This bill would allow but not require self-help centers to provide these additional services, which would ensure that local control was not eroded.

Colonia self-help centers have existed under statute since 1995. Today, some colonia residents need more than just housing development services. This bill would grant the department the authority to help colonia residents expand their economic opportunities.

OPPONENTS SAY:

While the services proposed by the bill would help some residents, HB 217 could divert essential funds from the self-help centers' primary duty and could leave colonia residents without proper housing services. While economic development is important, the self-help centers' primary purpose is to provide housing-related services. No other types of housing assistance are available to the colonias and their residents, and the services this bill would permit already are offered by other organizations.

SUBJECT: Expanding participation in regional tollway authorities

COMMITTEE: Transportation — favorable, without amendment

VOTE: 11 ayes — Pickett, Martinez, Y. Davis, Fletcher, Harless, Israel, McClendon, Murr, Paddie, Phillips, Simmons

1 nay — Burkett

WITNESSES: For — Kenny Howell, Johnson County; Michael Nowels, North Texas Tollway Authority; Terri Hall, Texas TURF, Texans for Toll-free Highways; (*Registered, but did not testify*: Mark Mendez, Tarrant County; Vic Suhm, Tarrant Regional Transportation Coalition)

Against — Don Dixon

On — (*Registered, but did not testify*: James Bass, Texas Department of Transportation)

BACKGROUND: Transportation Code, ch. 366 governs regional tollway authorities. Sec. 366.031 describes the formation of a regional tollway authority and the procedure by which a county can petition to join an authority. Subchapter B describes the powers and scope of regional tollway authorities, and Subchapter F details the governance of tollway authorities, including how board members are appointed.

DIGEST: HB 1394 would specify conditions under which certain counties that were outside a tollway authority but contained part of an authority's turnpike project would become part of the authority. This would occur on the date the authority determined that:

- toll collections at assessment facilities within the county accounted for at least 4 percent of tolls collected on all the authority's turnpike projects; and
- the county's population was at least 4 percent of the total population of the counties already in the authority.

The first time a regional tollway authority contracted to build a project in

a county that was not part of the tolling authority, the bill would require the authority to establish an advisory committee to advise the tolling authority board on the project. The advisory committee would consist of:

- the tolling authority's governor-appointed director, who would chair the committee;
- an additional director appointed by the authority's presiding officer; and
- one member appointed by each commissioners court in a county outside the authority in which the project would be located.

County-appointed members of the advisory committee would not be directors of the regional tollway authority. The board of the tolling authority could make rules governing the operation and duties of the advisory committee.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

HB 1394 would describe the circumstances under which a county affected by a toll road project could become part of the toll road authority that built it. Construction and administration of toll roads affects not only people who live in the counties of a tollway authority but those in neighboring counties who use the toll roads. These counties should have their interests represented, whether through joining the regional tollway authority or — prior to meeting the population and toll-collection thresholds in the bill — gaining representation on a tollway advisory committee that would guide the authority in building its first project in the county.

OPPONENTS SAY:

HB 1394 would expand the scope of tollway authorities and make toll roads even more entrenched in the Texas transportation system. Rather than participate in the governance of tollways, counties should use pass-through financing in their jurisdictions, in which a project developer pays the up-front cost of building a road in exchange for negotiated payments from the state after its completion based on the number of vehicles that drive on it.

SUBJECT: Requiring that parties requesting rule adoption be located in Texas

COMMITTEE: Government Transparency & Operation — favorable, without amendment

VOTE: 5 ayes — Elkins, Walle, Galindo, Gutierrez, Leach

0 nays

2 absent — Gonzales, Scott Turner

WITNESSES: For — (*Registered, but did not testify*: Marla Flint; Tom "Smitty" Smith)

Against — None

BACKGROUND: Government Code, ch. 2001 is the Administrative Procedure Act. Sec. 2001.021 allows an individual or entity to petition a state agency requesting the adoption of administrative rules. An agency that receives a petition must respond within 60 days to either approve the request and initiate the rulemaking process or to deny the petition in writing, stating its reasons for the denial.

Currently there is no requirement that the interested person submitting the petition be a Texas resident. Nor is there a requirement that a majority of the signers of a petition, if required by the agency, be Texas residents.

DIGEST: HB 763 would amend Government Code, sec. 2001.021 to require that an interested person submitting a petition requesting the adoption of agency rules be a Texas resident. A business, governmental subdivision, or a public or private organization submitting a petition would have to be located in Texas and could not be a state agency. If the agency required a signed petition under this process, the bill would require that more than half the signatures be from Texas residents.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUBJECT: Requiring disclosure of home mortgage information to a surviving spouse

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 5 ayes — Parker, Longoria, Capriglione, Flynn, Stephenson

0 nays

2 absent — Landgraf, Pickett

WITNESSES: For — Carlos Higgins, Texas Silver Haired Legislature; Thelma Clardy; Nicole Thornton

Against — Karen Neeley, IBAT; John Fleming, Texas Mortgage Bankers Association; (*Registered, but did not testify*: John Heasley, Texas Bankers Association)

On — (*Registered, but did not testify*: Caroline Jones, Texas Department of Savings and Mortgage Lending)

DIGEST: CSHB 831 would require mortgage servicers to provide certain information to surviving spouses of deceased mortgagors if the spouse supplied certain documents.

A surviving spouse requesting information from a mortgage servicer would have to prove his or her status as the surviving spouse by providing the mortgage servicer with a death certificate of the mortgagor, an affidavit of disinterested witnesses with language stating that the surviving spouse was married to the mortgagor at the time of the mortgagor's death, and an affidavit signed by the surviving spouse stating that the spouse currently was residing in the underlying mortgaged property as the primary residence.

The request also would be required to include a notice to the mortgage servicer that stated the following in bold-faced, capital, or underlined letters: "This request is made pursuant to Texas Finance Code section 343.103. Subsequent disclosure of information is not in conflict with the

Gramm-Leach-Bliley Act under 15 U.S.C. section 6802(e)(8).”

A mortgage servicer of a home loan would be required to provide the surviving spouse of the mortgagor with information within 30 days after receiving a request from the spouse accompanied by the documents described above. The required information, which the mortgagor would have received in a standard monthly statement, would include:

- the current balance information, including the due dates and the amount of any installments;
- whether the loan was current and any amounts that were delinquent;
- any loan number; and
- the amount of any escrow deposit for taxes and insurance purposes.

CSHB 831 would specify that a mortgage servicer that provided information to a surviving spouse as required by this bill would not be liable to the estate of the mortgagor or any heir or beneficiary of the mortgagor.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 831 would create a process for surviving spouses to obtain important information about their spouses’ mortgages. Currently, mortgage servicers require surviving spouses who are not listed on the mortgage to undergo some kind of judicial action, such as a formal probate or an heirship determination, before the mortgage servicer will give any information to the surviving spouse regarding the mortgage. These actions can be expensive, can take a long time to complete, and can be unnecessary. The bill would offer an alternative to allow surviving spouses to receive important information.

The bill would allow surviving spouses to receive only basic mortgage information and would not have any effect on determining heirs or assuming the mortgage. The surviving spouse, therefore, would not be considered an “obligor” under Finance Code, sec. 349.003, and only an obligor would have standing to sue a mortgage servicer for failing to provide information under this bill.

CSHB 831 would not conflict with federal disclosure laws under 15 U.S.C., sec. 6802 because the bill would create a state law that mandated this disclosure. While the federal Consumer Protection Bureau is considering a new rule that might cover the issues addressed by this bill, there is no guarantee that any rule actually will be implemented. Even though a new rule was proposed, the waiting periods required for notice and comment could delay implementation. Surviving spouses need access to this information now.

OPPONENTS SAY:

CSHB 831 may not be the best avenue to address this issue. While the bill would specify that mortgage servicers who complied with the bill would not be liable to the estate of the mortgagor, or to the heirs or beneficiaries, the bill would not protect mortgage servicers against being sued by the surviving spouse for refusing, in good faith, to disclose the requested information. Under Finance Code, sec. 349.003, a mortgage servicer could be liable if it failed to perform a requirement such as the one prescribed by this bill.

In 2014, the Consumer Financial Protection Bureau proposed a rule to address similar issues. The federal rule would be a more appropriate avenue to change financial disclosure requirements to ensure that state and federal law did not conflict. The rule also would be more appropriate than state law because many mortgage servicers operate in multiple states. Operating in multiple states is more difficult when a state’s law differs from federal rules.

SUBJECT: Texas Health Care Information Collection patient notification

COMMITTEE: Public Health — committee substitute recommended

VOTE: 7 ayes — Crownover, Naishtat, Coleman, S. Davis, Guerra, R. Miller, Sheffield

0 nays

4 absent — Blanco, Collier, Zedler, Zerwas

WITNESSES: For — Stephen Blake, Texas ASC Society; (*Registered, but did not testify*: Carrie Kroll, Texas Hospital Association; Dan Finch and John Carlo, Texas Medical Association; Daniel Leeman; H. Miller Richert; N. Keith Robinson)

Against — None

On — Nagla Elerian, Texas Department of State Health Services

BACKGROUND: The Texas Health Care Information Collection (THCIC), formerly known as the Texas Health Care Information Council, was created in 1995 by the 74th Legislature. The THCIC operates within the Department of State Health Services (DSHS) and collects data on health care activity in hospitals and health maintenance organizations operating in Texas.

Health and Safety Code, ch. 108 requires data received by the DSHS as part of the THCIC to be used for the benefit of the public. The collected data includes health care charges, utilization data, provider quality data, and outcome data to facilitate the promotion and accessibility of cost-effective, good quality health care. Health and Safety Code, ch. 108 requires the THCIC to promptly provide data to those requesting it.

Ch. 108 prohibits data from being released that could reasonably be expected to reveal the identity of a patient or physician. Data collected and used by DSHS as part of the THCIC is subject to confidentiality provisions in statute and certain criminal penalties unless specifically

exempted in statute.

DIGEST:

CSHB 764 would require a health care provider, including a physician or health care facility, to provide written notice to a patient whose data was collected by the Texas Health Care Information Collection (THCIC). The Department of State Health Services (DSHS) would include the notice as part of an existing department form and would make the form available on the department's website.

The notice provided to a patient would include:

- the name of the agency or entity receiving the data; and
- the name of an individual within the agency or entity whom the patient may contact regarding the collection of data.

The bill would specify that DSHS and the Health and Human Services Commission (HHSC) would have to use data received by the THCIC only for the benefit of the public. The HHSC executive commissioner would have to use procedures that met available best practices and national standards for public research and consumer use of government-collected health care data before releasing public use data to the public. The bill would require DSHS or the THCIC to maintain a database that did not include identifying information for use as authorized by state law governing the THCIC.

The bill also would require DSHS to prepare for the commissioner of state health services an annual report describing the security measures taken to protect data collected by the THCIC and any breaches, attempted cyber-attacks, and security issues related to the data that were encountered during the calendar year. The bill would require DSHS to notify the Department of Public Safety and the Federal Bureau of Investigation if a cyber-attack occurred targeting data collected by the THCIC. The annual report would not be subject to the Public Information Act in Government Code, ch. 552, but the report could be released on request to a member of the Legislature.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 764 would increase transparency regarding the use of Texans' health care data by requiring patients to be notified when their data was collected by the Texas Health Care Information Collection (THCIC) or the Department of State Health Services (DSHS). The state has collected these data from patients for 20 years and sells it to other entities for use in health care research, but patients currently are not required to be notified when their data is included in the state's database.

The bill would correct this gap in transparency by requiring patients to receive notice through an existing DSHS form, which was the least burdensome way for health care facilities and physicians to provide it. Patients need to know how their data is being used, and this bill would ensure patients were notified at the point when their data was created, when they saw their health care provider. The bill would not stop the collection of de-identified data for health research but would ensure that patients knew which agency or entity had received their data and whom to contact regarding the collection of those data.

The bill also would increase the security of data held by the THCIC against cyber-attacks by requiring DSHS to notify the Department of Public Safety and the Federal Bureau of Investigation if a cyber-attack occurred targeting data at the THCIC and by requiring an annual report to the commissioner of state health services regarding the security of data held by the THCIC.

OPPONENTS SAY:

CSHB 764 might create a burden for physicians and health care facilities by requiring them to provide another form to patients. State law already prohibits DSHS from releasing data or allowing a person or entity from gaining access to data in the THCIC that reasonably could be expected to reveal the identity of a patient or physician.